



## **Press Release**

### **National Labor Relations Board**

# **Supreme Court is asked to settle the question of two-member rulings by the NLRB**

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Washington, DC -- On behalf of the National Labor Relations Board, the Solicitor General of the United States today asked the Supreme Court to settle the question of whether the Board is authorized to issue decisions while three of its five seats remain vacant.

The request was made in two actions: a petition for *certiorari* in *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB* ([see the petition](#)), and a response to a *certiorari* petition filed by an employer in *New Process Steel, LP v. NLRB* ([see the response](#)).

The Board has operated with only two members for nearly two years, since the appointments of two Board members expired on December 31, 2007. Rather than cease functioning, the two remaining members – current Chairman Wilma B. Liebman, a Democrat, and Member Peter C. Schaumber, a Republican – have continued to issue decisions in matters on which they can agree. In doing so, they drew on advice from the U.S. Department of Justice’s Office of Legal Counsel, which concluded that “if the Board delegated all of its powers to a group of three members, that group could continue to issue decisions and orders as long as a quorum of two members remained.” The Board made such a delegation in December 2007, and since that time, the two Board members remaining, acting as a quorum of the group, have issued nearly 500 decisions.

While many of those decisions have been accepted by the parties, dozens have been appealed to the federal courts of appeals on the two-member question, and decisions have been split. The U.S. Courts of Appeals for the First, Second and Seventh Circuits have all held in favor of the Board, while the District of Columbia Circuit, in *Laurel Baye*, held that the Board did not have the authority to act. In *New Process Steel*, the Seventh Circuit held that, “The plain meaning of the statute....supports the [Board]’s delegation procedure.” Today’s filings ask the Supreme Court to affirm that finding and to reverse the contrary holding of the District of Columbia Circuit.

“We continue to believe that our position is correct, and hope that a decision from the high court will bring some finality to these cases,” said Chairman Liebman. Added Member Schaumber: “It is critical to the agency’s mission that this issue be decided.”

President Obama nominated three additional members to the Board in July, and they are currently awaiting Senate confirmation. Chairman Liebman said she is “hopeful that they will be confirmed soon and we can resume operations as a five-member Board.”

The National Labor Relations Board is an independent federal agency created by Congress in 1935 to administer the [National Labor Relations Act](#), the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from all such activity.

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